Supreme Court, U. S.
FILED
MAY 4 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 74-1623

CHESTER SLONE, ET AL ..... APPELLANTS

VS:

DESKINS BRANCH COAL COMPANY, ET AL ..... APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

SECOND SUPPLEMENTAL MEMORANDUM FOR APPELLANTS

C. KILMER COMBS
KELSEY E. FRIEND LAW FIRM
P. O. Box 512
Pikeville, Kentucky 41501

Attorney for Appellants

PRINT MASTER INC., 845 Lane Allen Rd., P.O. Box 4183, Lexington, Ky 40504, Ph. 277-5134

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 74-1623

CHESTER SLONE, ET AL ..... APPELLANTS

VS:

DESKINS BRANCH COAL COMPANY,
ET AL ..... APPELLEES

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY

SECOND SUPPLEMENTAL MEMORANDUM FOR APPELLANTS

MAY IT PLEASE THE COURT:

Appellants feel it is their responsibility to the Court to report legislative changes in the area in controversy. While not affecting appellants, the 1976 Kentucky Legislature enacted workmen's compensation legislation, known as House Bill No. 568, reducing the discriminatory effect for claimants last injuriously exposed in the coal mines on or after July 1, 1976. It reads in pertinent part as follows:

"SECTION 11. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

This Act, and the other sections of KRS Chapter 342, shall be effective on July 1, 1976, for all claims based upon an injury or last exposure which occurs on or after that date; provided, however that in the event the Federal Coal Mine Health and Safety Act provides that claims covered by the provisions of KRS Chapter 342 may also be filed with a federal agency, then, in that event, the increase in benefits provided by Chapter 78, 1972 Acts shall not apply to any individual claim under KRS Chapter 342, if benefits are awarded to and are received by that particular claimant under such federal law. The benefits under the law in effect prior to the effective date of Chapter 78, 1972 Acts shall apply to that claim and appropriate credit shall be given for any payments made in excess of the benefits provided for under that act. Anyone who files a claim under this Chapter for coal-workers pneumoconiosis or silicosis benefits must also file and pursue in good faith a claim under the Federal Coal Mine Health and Safety Act.

Section 12. KRS 342.330 and Section 37, Chapter 78, 1972 Acts of the General Assembly are repealed."

Since appellants (1973 claimants) and all claimants prior to July 1, 1976, will not benefit, this appeal is not affected.

The substance of this enactment, effective July 1, 1976, is that:

(1) *Mere eligibility* to receive Federal Black Lung Benefits will not deprive the individual coal miner of increased workmen's compensation benefits equal to all other recipients.

(2) Only individuals *actually receiving* Federal Black Lung Benefits will be deprived of the increased compensation.

(3) If increased compensation is paid and the individual coal miner is later awarded Federal Black Lung Benefits, "appropriate credits" are given retroactively to reduce benefits to that coal miner over the period covered to eliminate the increase.

(4) The coal miner is required to file and pursue a claim for Federal Black Lung Benefits (even if only partially disabled).

The thrust of this new legislation is to insure benefits on *either* the Federal Black Lung level *or* the Kentucky Workmen's Compensation level, with the coal miner required to "pursue in good faith" a Federal Black Lung Claim. And if awarded federal benefits, he cannot receive the increased state benefits. This enactment follows the judicially noted intent to favor the Kentucky coal industry as long as the federal program is paying the bill.

Respectfully submitted,

C. KILMER COMBS
KELSEY E. FRIEND LAW FIRM
P. O. Box 512
Pikeville, Kentucky 41501

Attorney for Appellants